

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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MASTER IN CHANCERY

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April 21, 2010

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RE: IMO The Real Estate of Lesley Holden, Deceased
C.A. No. 4996-MA

Dear Counsel:

This is my final report after the submission of a post-hearing memorandum on January 15, 2010, by The Mental Health Association in Delaware ("MHA"). For the reasons stated below, I am denying MHA's application as the sole remainder beneficiary of the Estate of Lesley Holden to receive additional proceeds from the sale of the decedent's real property located at 1603 Orchard Road, Wilmington, Delaware.

The decedent's will, dated March 5, 2004, left decedent's real property to Gerald Francis Robertson for the duration of his life. The will provided that upon the termination of the life estate, the remainder interest in the real property would go to Genoese, Miller and Associates, in trust, for the purpose of creating a memorial to the arts. The trust was terminable at the discretion of the trustee and, upon the termination of the trust, the remainder interest in the real property would vest in MHA.

Holden died on July 25, 2005. On October 16, 2009, the executor of her estate filed a petition to sell real estate to pay debts of the decedent. According to the petition, the assets of the estate (\$19,106.54) exceeded the debts of the estate, which included approximately \$21,000 in administrative expenses and legal fees, as well as nearly \$4000 for ground rent and county taxes owed on the real property. The verified petition alleged that the life tenant, who had resided at the property for a number of years, had abandoned the property and his whereabouts had been unknown for several months. After the life tenant left the property, pipes had frozen and burst, causing flooding, water damage, and mold. The real property was appraised at \$265,000, but the appraisal value did not take into consideration the cost of mold remediation and repairs. The petition sought the approval of a contract for the sale of the real property for \$250,000.

Notice of the petition was provided to interested parties by certified mail, by publication, and by posting on the premises.¹ MHA filed a limited objection to the petition, arguing that it was unjust for the life tenant to receive any portion of the remaining proceeds after the sale of the real property and payment of valid expenses because of the life tenant's abandonment and waste of the property. MHA argued that the Court should find that the life tenant had forfeited any interest in the real property or, alternatively, that the costs, expenses, and diminution of value suffered by the estate as a result of the abandonment of the real property by the life tenant should be assessed against the life tenant's interest. A hearing was held on December 10, 2009. The life tenant did not appear, but counsel for MHA reiterated its abandonment and forfeiture arguments.

By order dated December 15, 2009, I authorized the executor to sell the real property for the contract price of \$250,000. The trust was terminated and, after payment of the estate's debts, the net proceeds from the sale of the real property were to be apportioned between the interests of the life tenant and MHA. In the order, I also allowed the costs, expenses, and diminution in property value suffered by the estate as a result of the life tenant's abandonment to be deducted from the life tenant's share of the remaining proceeds and awarded to MHA. The return of sale was filed on January 29, 2010. The net proceeds available for distribution were \$205,714.29. The interests of the life tenant and remainder beneficiary were calculated, and amounts representing the costs, expenses, and diminution of value of the property were deducted from the life tenant's interest and awarded to MHA. A check for \$45,008.48, representing the balance of the life tenant's interest, was delivered to the Register in Chancery on February 1, 2010, pending my determination of the forfeiture/abandonment issue.

MHA argues that it is entitled to the funds that were deposited with the Register in Chancery because of the life tenant's voluntary abandonment of his interest and/or forfeiture of his interest due to his commission of extensive waste against the premises. Alternatively, MHA contends that it is entitled to double damages as a result of the life tenant's waste pursuant to 25 Del. C. § 909.² In addition, MHA argues that any balance of the life tenant's interest that is on deposit with the Register of Chancery should be deemed abandoned and forfeited if the funds are not claimed by the life tenant or his representative after a period of four years, and such funds should be distributed to MHA without further court order.

MHA has failed to demonstrate that Robertson's life estate terminated after he voluntarily abandoned the real property. Abandonment is not usually a method by which a life estate may be extinguished. *See Kimberlin v. Hicks*, 94 P.2d 335, 339 (Kan. 1939). In her will, the decedent gave Robertson "the dwellings at 1603, 1605 and 1607 Orchard Road, Ardentown, Delaware 19810-4231 and the rights to the leasehold upon which said dwellings are located, *for the duration of his life*."³ There were no contingencies attached to this testamentary gift that would have made the life estate subject to defeasance by the life tenant. *Compare Walters v. Neafus*, 125 S.W. 167, 169 (Ky 1910) (testator gave his widow the life estate in his real property,

¹ Notice was provided also to the Attorney General after the hearing. The Attorney General took no position on the petition.

² The executor calculated approximately \$21,000 in "damages" by adding the diminution in value of the property (appraised value less sales price), and the amounts paid by the executor for land rent, property insurance, and county sewer.

³ Exhibit 1 attached to Petition to Sell Real Estate to Pay Debts of Decedent (emphasis added).

“subject to be defeated by either of two acts on her part – one, should she marry again; the other, should she abandon the property.”). In this case, the life tenant’s voluntary abandonment of the real property did not defeat or terminate his life estate.

MHA also argues that Robertson forfeited his life estate by the commission of waste, citing II WOOLEY’S DELAWARE PRACTICE § 1581 and 25 Del. C. § 909. Under Delaware law, MHA argues, a life tenant’s waste will result in a forfeiture of the property and double damages. MHA argues, therefore, that as the sole remainderman of the estate, it is entitled to the net proceeds of the sale of the real property recovered by the executor. In the alternative, MHA argues, it is entitled at a minimum to double damages as provided in section 909 due to the tenant’s waste.

This matter came before me on a petition to sell real estate to pay the debts of the decedent. The real estate has now been sold and the decedent’s debts have been paid. The net proceeds have been divided according to the respective interests of the life tenant and the remainderman. The relatively small amount of damages due to the life tenant’s abandonment and waste have been deducted from his share of the net proceeds and awarded to MHA. Thus, MHA has received the value of its remainder interest unimpaired by any neglect or waste by the life tenant. The real property in which MHA had a remainder interest having been sold, MHA can no longer be concerned about any future waste by the life tenant. And in the absence of a formal action for waste, the Court has no legal basis to award double damages to MHA. Accordingly, MHA is not entitled to any of the funds deposited with the Register in Chancery.

Finally, MHA argues that the Court should allow the funds on deposit with the Court of Chancery to be awarded to MHA upon written request to the Register in Chancery if the life tenant does not come forward to claim the funds within four years from the date of their deposit. MHA argues that four years is a reasonable period of time for the Court to determine that there has been an effective abandonment and forfeiture by the life tenant. A determination that the life tenant has abandoned and forfeited his interest would result in the funds being distributed to MHA rather than escheated to the State as abandoned property after five years pursuant to 12 Del. C. § 1160(a)(1).

As I stated earlier, abandonment is not a legal basis for terminating the life estate and accelerating the remainder interest in this case. The decedent’s will gave Robertson a life estate in the property for the duration of his life. When this petition was filed, there was no basis for the court to declare that Robertson was dead simply because his whereabouts had been unknown for several months.⁴ Similarly, there was no basis for forfeiture where the property was to be sold to pay the debts of the estate, and the so-called “waste” committed by the life tenant had resulted in a relatively small depreciation in value (\$15,000) of this property, and a few thousand dollars of other expenses. The damages due to the life tenant’s abandonment and “waste” have been deducted already from the life tenant’s share of the net sale proceeds. The balance on deposit with the Register of Chancery is what is left of the life tenant’s interest in the property

⁴ A statutory presumption of death may arise after seven years of unexplained absence of a person from his last known place of residence. 12 Del. C. § 1701(a). The time period may be less than seven years if the person was exposed to specific peril of death. 12 Del. C. § 1701(b). There has been no allegation that the life tenant in this case was exposed to any specific peril of death.

after the adjustments. MHA is not entitled to any of these funds either now or in four years if the life tenant or his representative has not come forward by that time to claim them. Petitioner's counsel shall submit a form of order transferring funds in the amount of \$45,008.48 in the name of Gerald Francis Robertson to the Unclaimed Funds Account in the Court of Chancery.

Very truly yours,

/s/ Kim E. Ayvazian

Kim E. Ayvazian
Master in Chancery

cc: Register in Chancery